HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No.9414 of 2007

Between:

Agisam Veerappa

… Petitioner

And

Government of A.P. rep. By its Principal Secretary, Municipal Administration Department, Hyderabad & others.

… Respondents

:: ORDER::

Counsel for the Petitioner: Shri P. Venugopal

April 30, 2007

Per G.S. Singhvi, CJ

In this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for grant of a declaration that the construction made by respondent Nos.3 and 4 in premises bearing Door Nos.1/268 and 1/269, opposite Court Complex, Kadiri, Anantapur District is contrary to the sanctioned plan and is also violative of the provisions of the Andhra Pradesh Municipalities Act, 1965 (for short, 'the Act'). He has further prayed for issue of a mandamus to respondent Nos.1 and 2 to demolish the disputed construction.

The petitioner is the owner of house bearing Door No. 1/270 situated at Court road, Kadiri, Anantapur District and respondent Nos.3 and 4 are owners of the adjacent property. In October, 2005, the Commissioner of Kadiri Municipality (for short, 'the Commissioner') issued notice to respondent Nos.3 and 4 under Section 217 (1) of the Act requiring them to stop the construction being made in violation of approved plan i.e. B.A. No.118/2005-G1, dated 10-9-2005. In their reply, respondent Nos.3 and 4 denied the allegation that the construction made by them was contrary to the approved plan. Thereafter, the Commissioner issued notice dated 29-10-2005 for demolition of the disputed construction by reiterating that the same was contrary to the sanctioned plan.

On receipt of the aforementioned notice, respondent Nos.3 and 4 filed suit in the Court of Principal Junior Civil Judge, Kadiri for injunction and prayed that the defendants (respondent No.2 and the petitioner herein) be restrained from demolishing the construction raised by them. The same was registered as O.S.No.499 of 2005. Respondent Nos.3 and 4 also filed I.A.No.1172 of 2005 for grant of temporary injunction. By an order dated 5-11-2005, the trial Court restrained the defendants from demolishing the disputed

construction. Thereafter, the petitioner filed Writ Petition No.23681 of 2005 for issue of a mandamus to the Commissioner to take action against the alleged illegal construction made by respondent Nos.3 and 4. The same was disposed of by the learned Single Judge with a direction to the trial Court to dispose of I.A.No.1172 of 2005 without giving further adjournment. After disposal of the writ petition, I.A.No.1172 of 2005 was taken up by the trial Court for hearing on 23-11-2005, but the same was adjourned on more than one occasion. On 2-12-2005, the learned trial Court passed a detailed order, the operative portion of which reads as under:

> "Hence the petition is dismissed. No costs. This court deems fit in the interest of justice that one more opportunity should be given to the petitioners to advance their contentions and therefore their counsel is directed to advance his arguments in I.A.No.1197 of 2005 on or before 7-12-2005."

In the meanwhile, respondent Nos. 3 and 4 filed I.A.No.1307 of 2005 with the complaint that they were not given proper opportunity of hearing. The same was considered by the trial Court while passing order dated 2-12-2005. However, as the final order was not to the liking of respondent Nos.3 and 4, they challenged the same in C.R.P.No.6711 of 2005, which was dismissed with costs.

During the pendency of the case before the trial Court, I.A.No.542 of 2006 was filed by the petitioner for appointment of Court Commissioner for verification of the physical structure of the construction raised by respondent Nos.3 and 4. The trial Court accepted his request and appointed the Court Commissioner. At that juncture, the Commissioner filed S.T.C.No.103 of 2006 in the Court of Special Judicial Magistrate of II Class, Kadiri for prosecution of respondent Nos.3 and 4 by alleging that they have raised construction in violation of the sanctioned plan. Respondent Nos.3

and 4 pleaded guilty and, on that basis, they were convicted under Section 252 Cr.P.C. and sentenced to pay fine of Rs.250/- and in default to suffer simple imprisonment for a period of five days each respondent Nos.3 and 4 also withdrew the suit filed by them.

The grievance of the petitioner is that even though the construction made by respondent Nos.3 and 4 is ex facie contrary to the sanctioned plan and the provisions of the Act, the officers of respondent No.2 have, instead of demolishing the same, entered into a compromise with respondent Nos.3 and 4 and compounded the same.

We have heard Shri P. Venugopal, learned counsel for the petitioner and perused the record. In our opinion, the writ petition is liable to be dismissed because the petitioner has not produced any evidence before the Court to show that the officers of respondent No.2 have compromised the matter with respondent Nos.3 and 4 and regularized the construction raised by them in violation of the provisions of the Act and the sanctioned plan. In a matter involving intense litigation between the parties, it is not possible to entertain the prayer made by the petitioner by presuming that the competent authority of respondent No.2 has regularized the illegal construction raised by respondent Nos.3 and 4 ignoring the fact that the proceedings had been initiated against them under Section 217 of the Act as early as in October 2005 and they have admitted their guilt in S.T.C. No.103 of 2006.

In our opinion, the petitioner should have, before invoking jurisdiction of this Court under Article 226 of the Constitution of India, filed an application under the Right to Information Act, 2005 (for short, ‘the 2005 Act’) and called upon the competent authority to supply him proceeding/order vide which the illegal construction raised by

respondent Nos.3 and 4 is said to have been compounded. He could have also filed an application in the Court of Principal Junior Civil Judge, Kadiri for taking action against respondent Nos.3 and 4 for violating the order of injunction dated 3-11-2005.

In the premise aforesaid, we decline to entertain the writ petition, but give liberty to the petitioner to file an application for taking action against respondent Nos.3 and 4 for violating the order of injunction. The petitioner shall also be free to file an application to the competent authority under the Right to Information Act, 2005 to supply proceeding/document vide which the illegal construction raised by respondent Nos.3 and 4 has been compounded and then file fresh writ petition, if so advised.

The writ petition is disposed of in the manner indicated above.

As a sequel to disposal of the writ petition, WPMP No.12002 of 2007 filed by the petitioner for issue of a direction to respondent No.2 to forthwith demolish the construction made by respondent Nos.3 and 4 in premises bearing Door Nos.1/268 and 1/269, opposite Court Complex, Kadiri is disposed of as infructuous.

G.S. SINGHVI, CJ

April 30, 2007

C.V. NAGARJUNA REDDY, J

svs